IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5320 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH F PATEL

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 5320 of 1990

MR RAJU K KOTHARI for Petitioner

MR BS PATEL for Respondent No. 1

MR MA BUKHARI, ld.AGP for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/07/2002

ORAL JUDGEMENT

The petitioner in this petition under Article 227 of the Constitution of India, has challenged the judgment and order dated 7.5.1990 passed by the Gujarat Civil Services Tribunal, at Gandhinagar ("Tribunal" for short), in Appeal No.256 of 1990, at Annexure.A to the petition. By the said order, the Tribunal partly allowed the appeal and quashed the order of the Addl.Development Commissioner, dated 31.12.1988 as well as the order of the District Development Officer, Vadodara, dated 30th September 1986, reducing the appellant-petitioner to the

minimum of his pay scale and instead, imposed a punishment of stoppage of four increments with future effect.

2. While serving as an Overseer in Taluka Panchayat, Sankheda, the petitioner was served with a charge sheet under which 10 Articles of Charges were given. A regular departmental inquiry was held against the petitioner on the basis of the inquiry report dated 27.8.1984 at Annexure.E to the petition, submitted by the Enquiry Officer to the District Development Officer, Vadodara, the respondent No.1 herein. Respondent No.1, by his order dated 30th September 1986, held that the Charges Nos. 8 and 10 were partially proved and Charge No.9 was doubtfully proved. The petitioner preferred an appeal to the Addl. Development Commissioner on 19.2.1987, who by his order dated 2.2.1988 held that the show cause notice that was issued by the District Development Officer, was not proper and therefore, without going into the merits of the case, he remanded the matter to the District Development Officer for fresh proceedings. The petitioner, however, preferred an appeal to the Tribunal, being Appeal No.127 of 1988 and by its order dated 16th August 1988, the Tribunal set aside the order of the Addl.Development Commissioner and directed him to decide the appeal on merits. The Addl.. Development Commissioner, by his order dated 31.12.1988 dismissed the First Appeal by confirming the order of the District Development Officer, Vadodara dated 30th September 1986, reducing the appellant to the minimum of his pay scale. The petitioner preferred an appeal being Appeal No.256 of 1989 challenging the said order before the Tribunal. As stated earlier, the Tribunal, by its order dated 17th May 1990 set aside the order of the Addl. Development Commissioner and imposed a penalty of stoppage of four increments with future effect, which is under challenge in this petition.

3. This is a petition under Article 227 of the Constitution of India. As per the settled law, it is not open for this Court to disturb the findings of facts recorded by the authorities below. Therefore, it was rightly not argued by the learned Counsel appearing for the petitioner on the merits of the case. However, the learned Counsel has challenged the stoppage of four increments imposed by the Tribunal. It was contended that the penalty imposed by the Tribunal is quite disproportionate to the proved misconduct committed by the petitioner. In the submission of the learned Counsel, the Tribunal itself has found that no major punishment in the instant case is called for and that if

the impugned order is allowed to stay, the petitioner will suffer economic loss all the time to come.

4. Normally this Court also will not like to interfere in the matter of punishment and will not substitute the punishment already imposed by the authorities below. However, considering the peculiar facts and circumstances of the present case, I am of the opinion that interference in the matter, as far as the punishment is necessary.

5. There were 10 Articles of Charges, out of which, seven were not held to be proved, by the Enquiry Officer. The Tribunal also, under the impugned judgment and order, held that the petitioner cannot be held responsible with respect to Charge No.10 which relates to incomplete houses. The Tribunal, therefore, held that the said Charge No.10 has not been proved. As far as Charges Nos.8 and 9 are concerned, it was observed by the Tribunal, in para 10 of the judgment, as under:

> "10. The Charge No.8 is held to be partially proved by the Inquiry Officer. More specifically he has held that the delinquent cannot be held responsible for the giving of materials and for the payments made on the authority given by the beneficiaries, but that the delinquent Shri Patel is responsible for issuing completion certificates in respect of the houses of the following persons, viz. (1) Smt. Mariamben Chitabhai, (2) Dalpatbhai Harkhabhai, (3) Vithalbhai Chhaganbhai, (4) Zaverbhai Chinabhai & (5) Mohanbhai Maganbhai (though these persons were not sanctioned any assistance under the Rural Housing Scheme). In the representation dated 24.9.85 to the show cause notice of the Disciplinary Authority dated 12.9.85, the appellant has contended that as regards charge No.8, of the five instalments of the Rural Houses, three were paid already before he had assumed charge and he was new and relied upon the identification of the persons and houses built given by the Talati and had therefore given the completion certificates. That in all cases the houses were existing and therefore he had given the certificates. He further argues that in some cases besides the authorised houses under the rural housing scheme, many unauthorised constructions were also regularised."

In para 11, it was further observed by the Tribunal as under:

"11. We have given thought to all the points and arguments made by the appellant, but are not able to agree to any explanation for his having given completion certificates for houses which were not sanctioned under the Rural Housing Scheme for which no subsidy was to be given under the said scheme. As Extension Officer, it was his duty to see that the scheme was properly implemented and he should not have given completion certificates in respect of houses which were not constructed under the Subsidy scheme. Now take the case of Smt.Mariamben Chitabhai (page No.211 of the District Panchayat Office file). She has stated before the Inquiry Officer that her husband has died and she had not been given any plot to build a house. She has not been given any materials. Her husband had died six years before. Her husband had built the house on ownership land. Similarly in the case of Dalpatbhai Harkhabhai (page 109 of the file) the letter has stated that he stays in the house which was existing since the time of his father and was on his father's ownership. Thus the appellant gave completion certificate under the Rural Housing scheme in respect of pre-existing houses. Witness Zaverbhai Chinabhai (page No.111) has testified before the Inquiry Officer that he has not been given any plot and he has not constructed any house. Thus the appellant in the case of Zaverbhai Chinabhai has given a completion certificate for a house which is not constructed. In short therefore the findings of the Inquiry Officer that the delinquent gave completion certificates for houses that were not constructed (under the Rural Housing Scheme) stands unrebutted and will have to be upheld. The appellant by his action in issuing the completion certificates has facilitated the fraud that has been played on the public exchequer. The appellant should have from his own records checked whether the persons to whom he was issuing the completion certificates where the beneficiaries really entitled to the grants."

Similarly, as far as Charge No.9 is concerned, in Para 12, the Tribunal has observed as under:

"12. As regards the Charge No.9, there is no

dispute by the appellant about the facts comprised in this charge and in his representation he relies on the report of the Inquiry Officer who is of the opinion that the corrections that are made are not made with any malafide intentions. We therefore accept the findings of the Inquiry Officer in substance but not in the language of his report because the Inquiry Officer has said that the Charge No.9 is held to be "doubtfully" proved. We hold that the charge is proved so far as it relates to the facts about the corrections, but it is not proved that the corrections were made by way of malpractice. It could be said that the delinquent was negligent in his work and had therefore to make the corrections."

6. In view of the aforesaid two charges, the Tribunal has considered the question about the punishment to be given as observed in paragraph 17 of the judgment, which is as under:

"17. Now considering the charge that have been held to be proved by us above, next question will be about punishment that should be meted out. From the charge that are held to be proved by us, though the appellant cannot be said to have acted in a bonafide manner, yet there is the possibility of his having committed the faults in respect of the charges proved owing to extreme negligence and carelessness and therefore may not necessarily have been a corrupt motive, though the possible existence of some corrupt dealings could not be completed ruled out. The episode of this scandal appears to have started before the appellant took over as Extension Officer in Sankheda Taluka and his predecessor in-office and others also appear to be initially involved in this scandal. Action has yet to be taken against the principal person in whose tenure, the whole scandal has taken root. Therefore, the punishment so far the appellant is concerned should not be a major punishment. At the same time such dereliction in duty and complete irresponsibility as has been shown by the appellant in this case also cannot be viewed lightly. The ends of justice will be met if four increments with future effect of the appellant are withheld. The allegation of the appellant that no action was taken against the previous

Extension Officer who was taken against the previous Extension Officer who was the principal person involved in this case and he has been promoted to a Gazetted post, may be looked into by the authorities concerned."

7. Having gone through the reasoning of the Tribunal regarding the punishment part, I am of the opinion that even though the Tribunal has observed that the petitioner cannot be said to have acted in a bonafide manner, yet there is a possibility of his having committed the faults in respect of the charges proved owing to extreme negligence and carelessness and there may not necessarily have been a corrupt motive, though the possible existence of some corrupt dealings could not be completely ruled out. Once the Tribunal has recorded a specific finding that the proved misconduct being out of negligence and carelessness on the part of the petitioner and the same being not a case of major punishment, the punishment of stoppage of four increments with future effect is not called for and therefore this is a fit case which is required to be interfered with. Considering the peculiar facts and circumstances of this case, in my opinion, the ends of justice shall be met if the punishment of stoppage of four increments without future effect is imposed upon the petitioner. Therefore, the petition deserves to be allowed in part and the following order is passed:

In the result, the petition is partly allowed. The judgment and order dated 7th May 1990 passed by the Gujarat Civil Services Tribunal, at Gandhinagar in Appeal No.256 of 1989 is set aside as far as the punishment part only and instead, it is ordered that on the proved charges of the petitioner, there shall be stoppage of four increments without future effect. The authorities are directed to calculate the amount of pay arrears in pursuance of this order to the petitioner as early as possible and preferably within eight weeks from the receipt of this order. Rule is made absolute to the above extent only. There shall be no order as to costs.

(Kshitij R. Vyas, J.)
Sreeram.